

Edwin J. Wilson, Jr. (Bar No. 48881)  
Kurt C. Wendlenner (Bar No. 238434)  
**WENDEL, ROSEN, BLACK & DEAN LLP**  
1111 Broadway, 24th Floor  
Post Office Box 2047  
94604-2047 Oakland, CA 94607-4036  
Telephone: (510) 834-6600  
Fax: (510) 834-1928

Attorneys for Defendant  
Port of Oakland

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

TERRY BROWN,

Plaintiff,

vs.

PORT OF OAKLAND,

Defendant.

Case No. C 08-02358SI

**REPLY MEMORANDUM IN SUPPORT  
OF THE PORT OF OAKLAND'S MOTION  
TO DISMISS OR IN THE ALTERNATIVE  
FOR SUMMARY JUDGMENT**

Date: August 22, 2008  
Time: 9:00 a.m.  
Courtroom: 10, 19<sup>th</sup> Floor

**I. ARGUMENT**

Plaintiff Terry Brown ("Brown") has not filed an opposition to the Port of Oakland's ("the Port") Motion to Dismiss (Rule 12(b)) or in the Alternative, Motion for Summary Judgment (Rule 56). Brown advances neither law nor argument to suggest that his complaint is not, on its face, defective for the reasons stated in the Port's motion under Rule 56(e)(2),

When a motion for summary judgment is properly made and supported, an opposing party may not rely merely on allegations or denials in its own pleading; rather, its response must – by affidavits or as otherwise provided in the is rule – set out specific facts showing a genuine issue for trial. ***If the opposing party does not so respond, a summary judgment should, if appropriate, be entered against, that party.*** (Emphasis added.)

The Port has established, by reference to the pleadings and through various declarations that Brown voluntarily retired from his employment with the Port in 2001, never reapplied and has not been considered for reemployment since that time. For these reasons, Brown cannot

1 establish a prima facie claim of discrimination or retaliation or that the Port took any action  
2 against him because of any protected - class status.

3 Significantly, it is also clear that Brown failed to exhaust his administrative remedies by  
4 failing to file his charge with the Equal Employment Opportunity Commission ("EEOC") within  
5 the statutorily prescribed time.

6 **II. CONCLUSION**

7 For the foregoing reasons the Port's Motions pursuant to Rules 12(b) and 56 should be  
8 granted in their entirety. This matter should be dismissed and judgment should be granted in  
9 favor of the Port.

10 Dated: August 4, 2008

WENDEL, ROSEN, BLACK & DEAN LLP

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13 By: /s/ Edwin J. Wilson, Jr.  
14 Edwin J. Wilson, Jr.  
15 Attorneys for Defendant  
16 Port of Oakland  
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**PROOF OF SERVICE**

I, Louis Agront, declare:

I am a citizen of the United States and am employed in Alameda County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 1111 Broadway, 24th Floor, Oakland, California 94607-4036. On August 4, 2008, I served a copy of the within document(s):

**REPLY MEMORANDUM IN SUPPORT OF THE PORT OF OAKLAND'S MOTION  
TO DISMISS OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT**

☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m. The facsimile machine I used complied with California Rules of the Court, Rule 2003, and no error was reported by the machine. Pursuant to California Rules of the Court, Rule 2006(d), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this Proof of Service.

☐ at my business address identified above by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, and by placing the envelope, addressed as set forth below, for deposit in the United States Postal Service that same day in the ordinary course of business. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ by placing the document(s) listed above in a sealed UPS envelope with overnight deliver fees paid or provided for, addressed to the person(s) on whom it is to be served, at the address(es) set forth below, and causing the envelope to be delivered that same date to a UPS courier or driver authorized by the express service carrier to receive documents for delivery.

☒ by personally delivering true and correct copies of the document(s) listed above in a sealed envelope, addressed to the person(s) at the address(es) set forth below, by leaving the envelope, which was clearly labeled to identify the attorney(es) being served, with the receptionist or other person apparently in charge at the address(es) set forth below.

☒ See attached service list

☒ I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on August 4, 2008, at Oakland, California.

/s/ Louis Agront  
Louis Agront

**Service List**

Terry Brown  
915 E. 21<sup>st</sup> Street  
Oakland, CA 94606  
(510) 967-6872

*Plaintiff in Pro Se*

Wendel, Rosen, Black & Dean LLP  
1111 Broadway, 24th Floor  
Oakland, CA 94607-4036